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(C m)

File No 59-52
Serial Nos 2

Previous References

Later References

GENERAL AND REVENUE SECRETARIAT

Serial Nos One

Part B for June 52

SUBJECT

Powers Exercised by the Commissioners under Sec 11 of the Corporation Act

L 3930/Pt 30 6-52.

The Controller S A D Blowe

(Pt 13/E)

Issues instruction

8/X/52

General and Revenue Secretariat

File No 152/mL of 1952-53

WD 015452—GPB—PZS—40 000—1 10-51

Serial No

From

The Controller, S N, D

No. 5403 Dated 27 3-52

Regrets clarification of the term "Emergency" for the exercise of the powers by the Commissioner under Sec 11 of the Corporation Act

The Stalemate created for a time by the election of a non party member as Mayor of the Corporation necessitated the Commissioner to exercise extraordinary powers under Section 11 of the Act on matters which he considered could not await until the Corporation met to transact the business.

2) The Auditor has therefore sought the instructions of the Controller, S. A. A which the Extraordinary powers exercised by the Commissioner in exercise of his extraordinary powers may be accepted in audit as valid from the point of view of Competency of Section as the circumstances the doubt whether the adjournment of the meetings of the Corporation may not constitute an act disposing of the subject matter not constituting what may be described as an Emergency or the circumstances (of which the terms is used in the context of the provisions of Sec 11 of the Act. The Controller has referred the matter on term to seek for a ruling

NOTE—Contn Sheet

Clarification of the term emergency under Sec 4 of the Corporation Act

File No 152/ml of 19 52-53

General and Revenue Secretariat

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3) The Suggestion of the Corporation Auditor to the effect that the Controller, S A O that an emergency for the exercise of these powers means and contemplates of fire, epidemics and such other imminent dangers to the Safety of the public may not be quite acceptable. Section 4 provides for the use of the extra-ordinary powers by the Commissioner in "Cases of emergency" and not "during times of emergency". The expression "Cases of emergency" is misconstrued and appears to admit of the interference being drawn that the Commissioner can exercise the powers in individual cases which in the opinion thereof would meet the ordinary procedure and the consequential delay. The payments authorised by the Commissioner might have been urgent & if so desirous this may be verified getting the list) and the exercise of the powers cannot be deemed to be otherwise of that Act as the situation created by the continuous postponement of the meetings and adjournments has created paralysed the administration and hence was an actual emergency

4) The dead-lock is now resolved and the Corporation has been meeting and transacting business. The process to Sec 4 however requires the Commissioner to report forthwith the action taken

Serial No.

under the emergency powers and the Person there for to such other authority as had to sanction the same. The Commr. may perhaps place all these matters before the Corporation for ratification and Regularisation

5) If approved necessary instructions will be issued accordingly by the Commr, Corporation under Copy of the Circular S & D

nae 10/4/57 good 10/4/57

6) Whenever the Commissioner exercises the powers under circumstances which he considers as emergent, he must report forthwith the action taken to such authority which has the power to sanction. The expenditure incurred is always subject to sanction of the authority which is, by-law, empowered to so sanction. If the authority does not sanction, the Commissioner will stand the risk of making good the amount spent ~~if it is turned down~~

7) But in the present case, the Controller solicits instructions ~~whether~~ as to which circumstances should be considered as "Emergent". In this connection it has to be stated that the situation can be treated as Emergent in the following cases

8) i When something extra-ordinary, which was not expected in the usual course of thing

Note—Contn Sheet

has faced the authorities, which may bring great dislocation of work

2 when an epidemic has broken out

3 When ~~essential~~ Supply of water to the town or to any part of the town has suddenly stopped due to failure of the System anywhere

4 When the Sanitary arrangement or System of ~~the Corp~~ has come to a Stop due to ~~emergent~~ reasons beyond one's control

5 When the Power supply has failed etc etc

9) Now no such emergency has arisen If there was such an emergency, ~~the G that~~ would prevail for months together, then the Situation should have been brought to the notice of Govt for such orders as are deemed fit by Govt

10) From certain References received from the Corporation, it is seen that it is not an emergent Situation that has made the Commissioner to take action under Section 11) the City of the Corporation Act, — because no such Emergency exists, it is the inefficiency of the Corporation as a whole that is

Serial No

Responsible for the present Situation
It is not Section 11 that has to be resorted to but it is Section 45 that has to deal with such Situations Section 45 states that if on receipt of any information or Report obtained under Section 43 or 44, the Govt are of opinion

(a) that any duty imposed on any Municipal Authority by or under this Act has not been performed or has been performed in an imperfect, inefficient or unsuitable manner

(b) the Govt may, by an order, direct the Corporation or the Commissioners within a period to be specified to make arrangements for the proper performance of the duty

and that Govt may give the Corporation an opportunity of showing cause why such order should not be made

12 Certain Consequences will follow if the Corporation still fails to perform its duty
It is there Sections of the Act that have to be resorted to but not Section 11, because such a Situation called emergent does not prevail nor is there any situation nearer to State of war
It is for orders whether a detailed Report may be called for under Section 43 of the Act for the

NOTE—Contn Sheet

Powers exercised by the Commr under Sec 11 of the Corporation Act

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General and Revenue Secretariat

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requesting the Commissioner to explain the circumstances which led him to believe that state of emergency existed and that it still continues

Secy) dt 5/

5/11/52

13) As I read Section 11 the Commr can exercise the powers under that Section whenever the execution of any work or the doing of any act cannot wait till it is sanctioned by the authority normally competent to sanction it. The test in such cases would be the time within which the matter could have been got sanctioned by following the normal procedure and the and whether the execution of the work or doing of the thing could have been postponed till then. It is also seen that an order passed by the Commr under Sec 11 is not final ~~in the~~ as it appeared ~~from~~ is subject to such instructions as the competent authority may issue after considering the report made by the Commr. The power

Serial

Subsequent
facto ratification of the Commr's
action by the competent Municipal
authority would be tantamount
to acceptance of his judgment
that an emergency existed I
am therefore of the view that the
only authority which can judge
whether the Commr's powers under
Sec 11 were exercised on sufficient
grounds is the Corporation and
as long as the Corporation has not
questioned the action taken by
the Commr, the action has to be
deemed valid, & legal and proper. If the Corporation
Consider that the extraordinary powers
of the Commr are resorted to without
valid reasons, the Corporation can,
in addition to reversing his action,
take action for the Commr's removal
under Sec 8(2).

14) In this connection it may
be useful to refer to the extra-
ordinary powers of the Executive
under the Constitution. Thus the
Governor or Rajpramukh of a State
can pass Ordinances under Art 213
in cases
of emergency No authority except
the Legislature can go into the

Note—Contn Sheet

Powers exercised by the Commr under Sec 11 of the Corpn Act

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General and Revenue Secretariat

Serial No

question whether there was any necessity to pass the Ordinance and whether the matter could not wait till a Bill was regularly considered and passed by the Legislature. The powers of the Commr & the Corporation under Sec 11 are comparable to the powers of a Governor or Rajpramukh under Art 213 of the Constitution and it seems to me that no authority except the Corporation, & least of all the audit office can question the propriety of such action.

15) For favour of remarks

Law Secy)

KS 20/4

2114

2 21/PR 1952

16) Kind reference is invited to 'A' in the above note of the L S & Secy. The grounds on which the view as at 'A' has been arrived at, appear to be legally correct and it appears to me that the view as at 'A' is ~~legally~~ acceptable from a legal point of view. If so, it would be inappropriate that the Govt should consider at this stage whether any emergency as required under

Clarification of the term "Emergency" under Sec 11 of the Corporation Act Vs/Cbs

General and Revenue Secretariat | File No 152/52 of 19 | [App 1 III-2

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Serial No

Sec 11 existed or not This being primarily a matter for the Corporation to consider and decide any expression of opinion by Govt at this stage, on a point raised in the course of which may lead to complications

2 JUN 1952

Law Secy) 31/5

17) I agree It is not within the competence of Govt to give any ruling so as to bind the Corporation or its authorities, re the meaning to be attached to the word "Emergency" in sec 11 of the Corp^n Act

Secy L&J) 3/6 3/6 3/6/52

18) For orders if a copy may be sent to the Controller, S.A.D cii the letters & portion marked 'A' cii para 13 and the above Law opinion

Cas 9/6/52 9/6

19) A Reply will be sent on the lines suggested at 'A'

Secy L&J) 12/6 13/6/52 13/6

No 2—Contn Sheet

powers exercised by the Commissioner under Section 11 of the Corporation Act

File No 1502/MK of 19 | General and Revenue Secretariat

Serial No

21) Off Letter to the Controller S A D is put up for approval

22) It is also for consideration whether a copy of this letter should go to the Corporation Commissioner

Issue
11
196

To

The controller S A D

L 3930/dated 30-6-82

C R 6-7-82 2

issuers certain instructions.

B Rent
Sorry
To be filed Jagir

No 45]

GOVERNMENT OF MYSORE

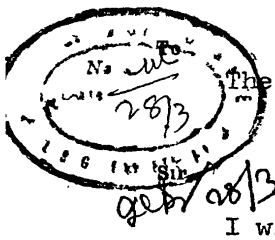
Tele gram phone

No 5403
Encls one

OFFICE OF
Controller,
State Accounts Department,
Bangalore

Date 27th March, 1952

C R 59-52-1



The Secretary to Government,
Local Self Government Department,
Bangalore

I write to forward herewith a copy of letter No 903 dated 18 3 1952 from the Auditor, Corporation of the City of Bangalore, reporting that the Commissioner of the Corporation was exercising the extraordinary powers vested in him under Section 11 of the Corporation Act from January 1952 onwards until recently as the Ordinary Meetings of the Corporation were being adjourned from time to time without transacting any business The Auditor is of the opinion that the situation that had arisen in the Corporation by indefinite adjournments cannot be deemed as an emergency under Section 11 of the Act and that the spirit of the Section does not admit the exercise of the extraordinary powers to carry on the routine functions As no statutory rules have been framed under the - Corporation Act as yet, and in particular as the word "emergency" appearing in Section 11 of the Act has not been defined, I am of the view that it is difficult to maintain the objection raised by the Auditor I therefore request you kindly to obtain a ruling from Government as to what circumstances constitute an "emergency" under Section 11 of the Act and communicate the same to me for guidance in audit

Yours faithfully,

CONTROLLER I/C

KNN

Copy of letter No 903/C A /51-52 dated 18 3 52 from the Auditor, Corporation of the City of Bangalore, to the Controller, State Accounts Department

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Subject:-- Powers exercised by the Commissioner under Sec 11 of the Corporation Act

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I write to state that the Commissioner, Corporation of the City of Bangalore, is exercising extraordinary powers bested in him under Section 11 of the Corporation Act on the ground that the ordinary meetings of the Corporation are being adjourned since January 1952 without disposing of the subjects placed before the Council for consideration The Standing Committees are functioning as usual The Commissioner of the Corporation has resorted to the use of the Section 11 of the Corporation Act, taking this as an emergency situation and has exercised powers to sanction estimates (original and revised), fixing the rates of articles, appointing extra staff, sanctioning re-appropriations, reducing or continuing grants etc , which require the sanction of the Corporation in the usual course In exercising such powers the Commissioner states that it is found necessary for the service of the public that the subjects should be disposed of immediately and accordingly exercises the required financial sanctions and orders the payment of expenditure out of the Municipal Funds A list of such sanctions given to the Commissioner which have been brought to the notice of the Audit as well as a copy of the form of the order is enclosed

In many of the cases the previous sanction of the Standing Committee are obtained But in some cases, the Commissioner has exercised the power and reported the same to the Standing Committee and Corporation The powers under Section 11 of the Act are being used by the Commissioner in respect of all matters that come up in the course of the working of the Corporation irrespective of the fact whether they require immediate execution or not

A doubt is felt whether the present state of affairs could be deemed as an emergency situation as contemplated in Section 11 of the Act requiring exercise of extraordinary powers by the Commissioner and whether the sanctions conveyed by the Commissioner may be accepted in audit as valid, from the point of view of competency of sanction It would appear that the extraordinary powers vested in the Commissioner have to be exercised at times of emergencies such as outbreak of fire, epidimecs and such other imminent dangers to the safety of the public calling for immediate action without admitting of the slightest delay involved in reporting the matter or consulting a different authority These powers are expected to be exercised in anticipation of approval of one or other Municipal authorities (Standing Committee and Corporation) , When these bodies are functioning properly in the normal course It is not clear whether the Commissioner could exercise powers to carry on the routine functions under this Section or whether he should invoke powers under some other section or derive powers special orders of Government Matters that could afford to be postponed for some more days or months may not come under the purview of this Section but no such differentiation is made I therefore request that Government may kindly be addressed to clarify the position as to whether the Commissioner could exercise the powers under Section 11 in the present circumstances Early orders are requested as this is the year end and a number of bills have to be admitted against sanctions conveyed by the Commissioner in matters that require sanction of the Corpotation

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"C o p y"

Controller

Appendix F G —1]

SUBJECT

Diary No of letter replied to

General and Revenue Secretariat

( )

the 19

Date of issue

Signed by

List of enclosures ..

Copied by

Examined by

Section

File No

Serial No

No L 3930 & 26 6 52.

To

The Controller

S A D - Blore

Sir,

With Reference to your Cellar No 5403 dated 27 3 52 Requesting clarification of the term 'Emergency' for the exercise of powers by the Commissioner under Sec 11 of the Corporation Act, I am directed to State that the powers, within the meaning of the above Section, can be exercised by the Commissioner whenever the execution of any work or the doing of any act cannot wait till it is Sanctioned by the authority competent to Sanction it. Also an order passed by the Commissioner under this Section is not final, as it is Subject

to such instructions as the Comptroller-
General may issue after Consideration
the Report made by the Commissioner. Also
by subsequent ratification of the Councils
action by the Comptroller General
would be sufficient to accomplish
the object of the judgement that an emergency
existed Thus the only authority
which can judge whether the Council's
powers under Sec 11 were exercised
on sufficient grounds is the Corpn
and as long as the Corporation
has not questioned the action
taken by the Council, the action taken
has to be deemed valid, legal
and proper

I am therefore to state that
it is not within the Competence
of this to give any Ruling so as
to bind the Corporation or
the authorities regarding the manner
to be attached to the word "Emergency
in Sec 11 of the Corporation Act

Yours faithfully
sd
for A. S. G. Secy.
Chas
18/6/62

KRS
21/6/62